

OGC REVIEW COMPLETED

27 April 1956

MEMORANDUM FOR RECORD

SUBJECT: Telecommunications Conventions

1. Earlier Conventions on telecommunications such as the Madrid Convention of 1932 and the Cairo Convention of 1938 were superseded by the Convention prepared and signed at Atlantic City in 1947. The 1947 Convention in turn has been superseded by a Convention prepared and signed at Buenos Aires in 1952.
2. In ratifying the 1947 Convention the United States made certain reservations. This Convention has several regulatory annexes. These are called the General Regulations, the Telephone Regulations, the Telegraph Regulations, the Radio Regulations, and the Additional Radio Regulations. The United States did not become a party to the Telegraph, Telephone, or Additional Radio Regulations in becoming a party to the 1947 Convention. Subsequently on 26 September 1950, the United States did become a party to the Telegraph Convention.
3. On 27 July 1955 the United States became a party to the Buenos Aires Convention. I discussed this matter with Mr. Whittington, extension 3315, of the Treaty Advisors Office of the Department of State. He advised me that under the terms of the Conventions, the 1952 Convention superseded the 1947 only in its application to States which had become parties to the later one. The United States, therefore, prior to its acceding to the 1952 Convention, was still bound by the terms of the 1947 Convention to those States which had been parties to it. At the present time the United States is bound by the 1952 Convention with respect to all States that are now parties thereto but remains bound by the 1947 Convention to those States which were parties to it, but have not yet become parties to the 1952 Convention.
4. The only article of either Convention pertaining to secrecy is that article entitled "Secrecy of Telecommunications" which appears as Article 32 in both the Conventions of 1947 and that of 1952:
 - "1. Members and Associate Members agree to take all possible measures, compatible with the system of telecommunication used, with a view to ensuring the secrecy of international correspondence.

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"2. Nevertheless, they reserve the right to communicate such correspondence to the competent authorities in order to ensure the application of their internal laws or the execution of international conventions to which they are parties."

It will be recalled that in 1947 the United States became a party to only two of the regulatory annexes. The General Regulations have nothing on this subject. The Radio Regulations provide in Article 21 adopted in 1947 and, so far as I know, continued without change in 1952, and under the title "Secrecy":

"The Administrations bind themselves to take the necessary measures to prohibit and prevent: (a) the unauthorized interception of radiocommunications not intended for the general use of the public; (b) the divulgence of the contents, simple disclosure of the existence, publication or any use whatever, without authorization, of information of any nature whatever obtained by the interception of the radiocommunications mentioned in (a)."

Definitions make it clear that this provision would not apply to communications by wire. Radio communication is defined in the Convention as "any telecommunication by means of Hertzian waves."

5. It seems to me that the provision of Article 32 by which States reserve the right to communicate this correspondence to "competent authorities" necessarily implies the right of the States to authorize such competent authorities to intercept such correspondence. By "intercept" here I mean to "read" and not to prevent delivery which is prohibited by other provisions of the Convention. I think it is also noteworthy that these articles, of which Article 32 is one, are primarily for the purpose of ensuring the flow of traffic. The international correspondence, the secrecy of which is protected by Article 32, would seem to be that correspondence which is accepted for transmission by a member State under the terms of the Convention. If the transmission is between States A and B with State C taking no part, I am inclined to the view that its interception by State C is in no way a violation of the Convention, even if the first argument adduced above were to fail.

6. I do not as yet have the Telegraph Regulations available, but have requested them. It is significant that we are not a party to the Telephone Regulations. I understand that the operative date of interest to us here is 11 May 1955.

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7. A separate memorandum discusses violations of the "harmful interference" provisions of these Conventions by the Soviet Union.

8. Both the Soviet Union and the United States became parties to the 1947 Convention, and a provision was made in the Convention for the later accession of Germany and Japan.

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Assistant General Counsel

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